

Remarks/Arguments

Upon entry of this Amendment, claims 1, 7, 8, 11-26, 29-40, 85, and 86 will be pending. Claims 27-28, 41-71, 82-84 have been withdrawn by the Examiner. Claims 2-7, 9-10, 72-81 have been cancelled without prejudice or disclaimer. Applicants reserve the right to prosecute the subject matter of the withdrawn and cancelled claims in a continuation, continuation-in-part or divisional application. Applicants have added no new claims. Support for the amendments can be found throughout the specification, including the original claims, as filed, for example, the combination of a beta-emitter and a gamma-emitter on a non-biodegradable microparticle is found within the original claims and the specific at para [0222].

Election of species

The Examiner is thanked for the search and examination effort. Applicants request rejoinder of claim 27-28 upon indication of allowable subject matter in the claim(s) from which they depend.

1. 35 USC 102(b)

Applicants have significantly amended the claims to further define the invention over the art of record (Rothman 4,115,536). In particular, the following claimed subject matter was *not* rejected as anticipated by Rothman: claims 2, 5, 7-11, 14-15, 17, 19-26, 31, 34, and 72-81. Rothman is limited to “swellable” polymers and does not disclose the combination of a beta-emitting radiotherapeutic and a gamma-emitting radiodiagnostic. Applicants have added to claim 1 the limitations of non-rejected claims 2-6 and 9. Accordingly, each and every element of the claimed invention, as is required to sustain a Sec. 102 rejection, is not found in Rothman. Given the limitations now in the claims, applicants believe that the issue of novelty no longer applies and request the Examiner to reconsider and withdraw the rejection.

2. 35 USC 102(e)

Applicants have significantly amended the claims to further define the invention over the art of record (Burns 7,276,254). In particular, the following claimed subject matter was *not* rejected as anticipated by Burns: claims 10, 11, 13-15, 18-26, 29, and 37. Burns does not disclose a diagnostic. Further, it appears that Burns may disclose “swellable” polymers. Further, Burns does not disclose the combination of a beta-emitting radiotherapeutic and a gamma-emitting

radiodiagnostic. Accordingly, each and every element of the claimed invention, as is required to sustain a Sec. 102 rejection, is not found in Burns. Given the limitations now in the claims, applicants believe that the issue of novelty no longer applies and request the Examiner to reconsider and withdraw the rejection.

3. 35 USC 102(b)

Applicants have significantly amended the claims to further define the invention over the art of record (Avy Domb 5,578,325). In particular, the following claimed subject matter was *not* rejected as anticipated by Domb: claims 8-11, 15, 19-26, 29, 33, 34, 36-38, 72-81, 85, and 86. Domb discloses a combination of hydrophilic (“swellable”) and hydrophobic block co-polymers (PLA, etc.) Domb does not disclose the combination of a beta-emitting radiotherapeutic and a gamma-emitting radiodiagnostic. Applicants have added to claim 1 the limitations of claims 2-6 and 9. Accordingly, each and every element of the claimed invention, as is required to sustain a Sec. 102 rejection, is not found in Domb. Given the limitations now in the claims, applicants believe that the issue of novelty no longer applies and request the Examiner to reconsider and withdraw the rejection.

4. 35 USC 103

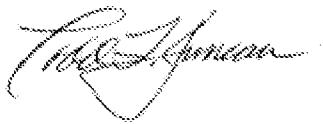
Applicants have significantly amended the claims to further define the invention over the art of record (Burns, in view of Wu, further in view of Danthi and Lugade). Burns does not disclose a diagnostic. Further, it appears that Burns may disclose “swellable” polymers. Burns does not disclose the combination of a beta-emitting radiotherapeutic and a gamma-emitting radiodiagnostic. Wu does not remedy the deficiencies of Burns as a reference. Wu discloses linking to antibodies, not modifying Burns to achieve the claimed invention. Further, it is immaterial that Danthi and Lugade disclose dendrimer linkages as applicants are not claiming to have invented this linkage. Accordingly, Burns does not suggest the combination with Wu to achieve the presently claimed invention, nor provides any motivation for doing so. Further, even if all of these references were combined, the teaching would not teach each and every element of the claimed invention, in the proper assembly, as is required to sustain a Sec. 103 rejection. Rather, a combination of so many references may merely constitute a box of parts inviting someone to attempt any one of a multitude of non-enabled possibilities. Given the limitations

now in the claims, applicants believe that the issue of obviousness no longer applies and request the Examiner to reconsider and withdraw the rejection. However, if the Examiner wishes to discuss this issue or make any suggestions, the undersigned attorney requests a call to expedite prosecution and so this application can move to allowance.

Conclusion

All of the stated grounds for objection and rejection have been properly traversed, accommodated or rendered moot. Applicants, therefore, respectfully request that the Examiner reconsider all presently outstanding rejections and objections and request that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Prompt and favourable consideration of this Amendment and Reply is respectfully requested.

With best regards,



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